

F0000057356

Division Bench (Criminal)

APPEAL OF PRISONER

No. 353/45

Name

गोरेलाल

Father's name हंशलाल

Residence राकित-सिरमिरा, शाना-

Age 23 वर्ष

पशान, जिला-बिलासपुर (म.प्र.)

Sentenced to आजीवन कारावास on 1-11-1990

Under section 302 भा.दं.वि.

by माननीय न्यायालय चतुर्थ अतिरिक्त
श्री न्यायाधीश, बिलासपुर (म.प्र.)

सत्र प्रकरण क्रमांक- 83/1989

it is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears either. If the legal practitioner does not appear within seven days he may not be heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

- 1 Date of Application for copy of Judgement निर्णय दिनांक को बन्दी ने न्यायालय से स्वयं प्राप्त किया है।
- 2 Date of which copy received 5-11-90
- 3 Date on which Appeal sent 10-11-90
- 4 Whether the prisoner wishes to be represented or not yes/No.

No. 3/45

Name

गोरेलाल आ. हंशलाल

Continued in प्र. 8/90 जिला बिलासपुर (म.प्र.)

No. 4058/प्र. 0/क/90 dated 10-11-90

19

Forwarded to the Deputy Commissioner C. J. M. Bilaspur (M.P.)

gather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent
Jail

Date of receipt in Deputy Commissioner's Office

Date of receipt of record to accompany

Memo of Appeal of the Appellate Court.

No. 4/1000/1000/90 dated 12/11/90 197

Forwarded to the O.C. R.I.C. for necessary action please

Deputy Commissioner

Date of receipt in Appellate Court

P.T.O.

Forwarded to the Additional Registrar
High Court of M. Jabalpur M.P.

(26)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No. 124/1991

Gorelal

Vs.

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
Dilip Raosaheb
Deshmukh
Judge

Hon'ble Shri Justice L.C.Bhadoo

Sd/-
L.C.BHADOO
Judge

Post for 30 -11-2005

Sd/-
Judge
-11-2005

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Appeal No. 124/1991****Gorelal****Vs.****State of Madhya Pradesh (now Chhattisgarh)**

**Coram :- HON'BLE SHRI JUSTICE L.C. BHADOO &
HON'BLE SHRI JUSTICE DILIP RAOSAHEB DESHMUKH, JJ.**

Present :-**Shri Abhay Tiwari, counsel for the appellant.
Shri M.P.S.Bhatia, Panel Lawyer for the State.**

JUDGMENT**(Delivered on 30-11-2005)**

**The following judgment of the Court was delivered by
Dilip Raosaheb Deshmukh, J.**

1. This appeal is directed against the judgment dated 01-11-1990 delivered by Shri K.C. Sharma 4th Additional Sessions Judge, Bilaspur in Sessions case No. 83/1989 whereby the appellant was convicted under Section-302 of the I.P.C. for committing murder of Paras Ram and was sentenced to undergo imprisonment for life.
2. Briefly stated the prosecution story is that on 09-09-1988 at 4.30 P.M., the deceased Paras Ram being the Sarpanch was undertaking the construction of Panchayat Bhawan. While, he was disbursing wages to the labourers co-accused Kanchania Bai came and held his collar and the appellant dealt several blows by a knife on the stomach, thigh and scalp of Paras Ram. The injured Paras Ram somehow reached the shop of Awadh

Bihari Jaiswal. The appellant Gorelal again dealt the fatal blow by a knife on the neck of Paras Ram, due to which Paras Ram died. F.I.R. was lodged on 10-09-1988 in Police Station-Pasan by Prem Singh, younger brother of the deceased. Assistant Sub-Inspector Dil Ram Singh PW-10 reached the spot and prepared inquest Ex.P-3, seized blood stained and plain soil vide Ex.P-4 and also seized one Rampuri Knife, Banyan and Pant on the memorandum of the appellant vide Ex.P-5. The dead body of Paras Ram was sent for postmortem examination. Dr. Sunil Kumar Sharma PW-4 who conducted the autopsy on 12-09-1988 found as many as 10 incised wounds on the body of Paras Ram. These injuries were on the left side of neck behind the right ear, below the left rib on the stomach, on the left lumbar region, on the right scapula and the left scapula near the 8th rib on the left shoulder, thigh and stomach and at the lumbar region. Dr. Sharma PW-4 opined that the cause of death was haemorrhage and shock due to multiple incised and penetrating injuries which were sufficient to cause death. The injuries were ante mortem and homicidal in nature.

3. After completion of investigation, the appellant with co-accused Kanchania Bai was prosecuted under Section-302 of the I.P.C.

4. The accused-appellant Gorelal abjured the guilt, pleaded innocence and examined one Sudarshan D.W.-1 in his defence.
5. The prosecution examined as many as 10 witnesses. Relying upon the evidence led by the prosecution, the Trial Judge convicted the accused-appellant for committing murder of Paras Ram under Section-302 of the I.P.C. and sentenced him as aforesaid. Co-accused Kanchania Bai was acquitted of the charge under Section-302 read with Section-34 of the I.P.C. since there was no evidence against her.
6. Learned counsel for the accused-appellant did not dispute that the death of Paras Ram was caused due to multiple stab injuries inflicted by the appellant but mainly contended that the appellant had inflicted the injuries upon grave and sudden provocation in a sudden heat of passion since the deceased had kept his elder sister Vachni Bai as wife. He placed reliance on **Shanmugam @ Kulandaivelu Vs. State of Tamil Nadu** reported in **2003 Cr.L.J.-418** and argued that the offence committed by the accused-appellant did not travel beyond Section-304 Part-I of the I.P.C. It was also argued that the appellant was in jail since 13-09-1988 i.e for over a period of 17 years and 2 months. Therefore, custodial sentence already undergone should be sufficient to meet the ends of justice. On the other hand,

learned counsel appearing for the State argued in support of the impugned judgment.

7. We have heard rival contentions and have also perused the record of Sessions Trial No.83/1989. Awadh Bihari PW-5 has stated that at about 3.30 P.M. when he was at his shop he saw that the appellant was assaulting Sarpanch Paras Ram by a knife. He saw that the appellant inflicted several injuries by a knife on the body of Sarpanch Paras Ram, due to which Sarpanch Paras Ram fell unconscious. Shyam Lal PW-6 has also corroborated the evidence of Awadh Bihari PW-5 and stated that on 09-09-1988 at about 3.30 P.M. in the weekly market he was taking tea in a hotel. Upon hearing noise he saw that the appellant was assaulting Sarpanch Paras Ram by a knife. He also stated that he saw that the appellant inflicted injury on the left side of shoulder to Sarpanch Paras Ram. In paragraph-3 of his evidence, he has deposed that Sarpanch Paras Ram had sustained 9 injuries and intestine had come out of his stomach. There is absolutely nothing in the cross-examination of abovementioned witnesses which would either rebut their testimony or render it unworthy of credit. Nothing has been elicited in their cross-examination which would show that they bear any grudge against the appellant or have any motive to

falsely implicate him. Their testimony is fully corroborated by Dr. Sunil Sharma, PW-4 who found as many as 10 incised injuries on the body of Sarpanch Paras Ram. These injuries were on the left side of neck behind the right ear, below the left rib on the stomach, on the left lumbar region, on the right scapula and the left scapula near the 8th rib on the left shoulder, thigh and stomach and at the lumbar region. Assistant Sub Inspector Dil Ram Singh has also proved the seizure of knife from the appellant. The evidence led by the prosecution thus fully establishes that on 09-09-1988 the appellant inflicted several injuries on Sarpanch Paras Ram by means of a knife and caused his death.

8. The only question which now requires our consideration is whether the appellant had caused the death of Paras Ram upon sudden heat of passion so as to bring the case within exception-4 to Section-300 of the I.P.C. It was argued by the learned counsel for the appellant that Paras Ram had kept the sister of the appellant as wife which had provoked the appellant to such an extent that he caused the death of Paras Ram. In order to bring the offence within exception-4 to Section-300 of the I.P.C. it has to be established by the defence that the accused had acted in a sudden heat of passion meaning thereby that the deceased had either provoked him or had done something at the time of occurrence which suddenly

aroused the passion of appellant to such an extent that he caused the death of Paras Ram. There is not even an iota of evidence which would go to show that Paras Ram had in any manner provoked the appellant or that the appellant inflicted the injuries on Paras Ram in a sudden heat of passion.

9. Having considered the evidence led by the prosecution in its entirety, we are of the considered opinion that the act of causing the death of Paras Ram by the appellant by inflicting several injuries on his body was an act of deliberation and upon pre-meditation. Death of Paras Ram was caused by the appellant in cold blood. Thus, we are of the considered opinion that the trial judge has rightly convicted and sentenced the appellant under Section-302 of the I.P.C.

10. In the result, the appeal has no substance, fails and is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dilip Raosaheb
Deshmukh
Judge